

Office of the Secretary of Defense

§ 275.11

U.S.C. 3401 et seq. No access to any financial records shall be made before such certification is given.

(c) *Certification.* Prior to obtaining the requested records under § 275.9 (a)(2) and (a)(3), a certification of compliance with 12 U.S.C. 3401 et seq. and Enclosure 4 of this part, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(d) *Annual report.* The annual reporting requirements of § 275.14 shall apply to access procedures under paragraph (a) and (b) of this section.

[45 FR 17576, Mar. 19, 1980, as amended at 48 FR 20228, May 5, 1983. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.

(a) Except as specified in paragraph (b) of this section, nothing in this part shall apply to requests for financial records in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in E.O. 12036, January 24, 1978.

(b) When a request for financial records is made under paragraph (a) of this section, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence and foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of 12 U.S.C. 3401 et seq. Such certification, in a format similar to enclosure 4 of this part, shall be made before obtaining any records.

(c) A Component requesting financial records under paragraph (a) of this section, may notify the financial institution from which records are sought that section 3414(3) of 12 U.S.C., prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(d) The annual reporting requirements of § 275.14 shall apply to any re-

quest for access under paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.11 Emergency access procedures.

(a) Except as provided in paragraph (b) and (c) of this section, nothing in this part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

- (1) Physical injury to any person.
- (2) Serious property damage.
- (3) Flight to avoid prosecution.

(b) When access is made to financial records under paragraph (a) of this section, Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

(1) Certify in writing, in a format set forth in Enclosure 4 of this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. 3401 et seq., as a prerequisite to obtaining access.

(2) Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(c) After filing of the signed sworn statement required by paragraph (b)(2) of this section, the Component that has obtained access to financial records under paragraph (a) of this section, shall personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under § 275.12.

Records concerning your transactions held by the financial institution named in the attached request were obtained by [agency or department] under the Right to Financial Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds].

Mailings under this paragraph shall be by certified or registered mail to the last known address of the customer.